

SENATE JUDICIAL COMMITTEE
CHIEF NO. 2
DATE 1-17-07
FILE NO. 56180

Mr. Chairman and Members of the Committee:

On behalf of the Jefferson County Commission, we would like to thank you for the opportunity to offer comment on Senate Bill 180, which seeks to revise the metal mine reclamation statutes.

We begin by expressing our support for requirements that ensure that mineral extraction occurs in the best manner possible. We further agree that proper reclamation must be completed and that adequate financial assurance is given to the State of Montana as a guarantee.

We also want to express our appreciation for the staff at the Montana Department of Environmental Quality (DEQ) in what is, often times, a very difficult and thankless job. We recognize that the Department must have adequate authority and necessary resources to conduct the job that we, as Montanans, ask of them.

We have some concerns about the proposed legislation. Moreover, we have some supportive comments on certain sections of the bill.

On Page 3, Lines 13-15 add language to require that sufficient data be presented to the DEQ as is relates to characterization of reactive natural materials. We support that change.

On Page 3, Lines 22-24 add language requiring a plan to outline how an operator will minimize contact of surface and ground water with reactive natural materials that have the potential to release contaminants. We fully support this change.

On Page 3, Lines 25-29 add language that requires an operator to outline methods used to ensure that waste rock that may contain natural reactive materials that have the potential to release contaminants, to be handled such that contact with surface and ground water is prevented. Again, we fully support that concept. However, we do not support the language as written. We take issue with a couple of words and phrases in that section. Allow us to explain.

When the words "ensure" and phrases like "to the extent possible" are used in statute, it gives us pause. After all, how exactly are words like that supposed to be interpreted and then implemented or enforced? How would a court interpret those words when a litigant brings an action, which sadly is the case more often than not? For example, my online dictionary defines the verb "ensure" as to "make something certain." Merriam-Webster's online dictionary also states, "Ensure, Insure, and Assure are interchangeable in many contexts where they indicate the making certain or inevitable of an outcome, but ENSURE may imply a virtual guarantee."

Encarta's Dictionary online defines the word "possible" as "Able to happen—capable of happening or likely to happen in the future" or "capable of happening but unlikely – theoretically capable of being done, of happening, or of existing, although difficult or unlikely in practice."

So here is the dilemma and maybe a solution. I believe that the DEQ wants to implement a regulation that requires an operator to do everything it can to prevent rock that may contain reactive materials from coming in contact with ground and surface water. On that, we agree. I am just worried about how this requirement is handled in the real world or would be interpreted by a court of law.

We stand opposed to this change in the law unless some of the verbiage were changed to truly reflect what we believe is the intent. It is possible to build an underwater highway and it is possible to place a man on the moon and return him to earth. Change the word "possible" on line 27 to the word "practicable" and we could support this particular revision. Practicable implies that it is capable of being done under a given set of circumstances.

Page 7, Lines 26-30 and Page 8, Lines 1-7, adds some specificity to how additional analysis and modification of a reclamation plan would be handled if a significant environmental problem or situation were revealed by field inspection. We can support that change.

Page 11, Lines 8-10, requires that when mine water must be treated after reclamation is complete; an operator is required to increase the bond amount by 50%. We do not support this revision. The bond should be accurately and thoroughly calculated. The bond does need to be sufficient to provide adequate financial assurance. It is our understanding that a bond can already include a contingency for reasonably foreseeable results. However, to arbitrarily just demand an additional 50% is not sound policy. Frankly, I am not even sure that a surety company would write such a bond anyway. Bonds, insurance, etc. all must have a factual basis for the guarantee and thus the risk.

Page 11, Lines 13-30 and Page 12, Lines 1-11 attempt to set out requirements for when and how the DEQ can require an interim bond. Unfortunately, we cannot support these changes. First, I believe that with operating mines, the DEQ has all the authority they need to revise a reclamation plan, require increases in bonding, and in fact, they have a mandate to review bonds annually. The law also requires a comprehensive review of bonds at least every 5 years. Further, the amount of bonding cannot be properly calculated until a determination has been made on a reclamation plan. Otherwise, it is just guesswork and based on a hypothetical. I want to emphasize again that the Jefferson County Commission is supportive of adequate bonding. We just believe that the DEQ has all the authority it needs currently.

In summary, we oppose Senate Bill 180 as written. We recommend that you give Senate Bill 180 a do not pass. Thank you for the opportunity to offer these comments.

Sincerely yours,

Jefferson County Commissioners

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